

them. The committees have avoided embarrassing a measure deemed of so much value and importance with any extraneous matter, or local contest, by embracing within either of the bills any county proposed to be taken from counties now settled, excepting the proposed counties of Hardin and Zapata, for which there is abundant territory.

Separate bills to create five of the eight counties provided for in the first bill have already been favorably reported upon in the one House or the other.

The committees, therefore, unanimously recommend the passage of the two accompanying bills, to-wit:

In response to petitions, and as a substitute for pending bills, to create Buchanan, Zapata, Archer, Hardin and Hamilton counties—

“A bill to create the counties of Archer, Mason, Menard, Zapata, Hardin, Hamilton, Kimble and Buchanan.”

And, secondly, with a view to future organization—

“A bill to create the counties of Concho, Wichita, Coleman, Dawson, Shackelford, McMullen, Eastland, Frio, Callahan, Zavalla, Edwards, Haskell, Knox, Hardeman, Dimmit, Baylor, Runnels, Jones, Wilbarger, La Salle, Duval, Cheshire and Taylor.”

All of which is respectfully submitted.

H. E. McCULLOCH,  
Chairman of Senate's Committee.  
JOHN HENRY BROWN,  
Chairman House Committee.

On motion of Mr. McCulloch, a House bill to create the counties of Archer, Mason, Menard, Zapata, Hardin, Hamilton, Kimble and Buchanan, was taken up and read first time.

On motion of Mr. Scarborough, the Senate adjourned until to-morrow morning 10 o'clock.

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WEDNESDAY, January 13, 1858.

The Senate met pursuant to adjournment—Prayer by the Chaplain—roll called—quorum present.

The Journal of yesterday was read and adopted.

On motion of Mr. Taylor of Houston, Senator Whaley was added to the committees on which Senator Millican, his predecessor, had been placed.

Mr. Herbert presented the following petitions :

The petition of Wm. H. Chandler ; referred to the committee on Claims and Accounts.

The petition of the heirs of John L. Johnston ; referred to the committee on Public Lands.

The petition of the heirs of James M. Henry ; referred to the committee on Public Lands.

The petition of Daniel M. Symons ; referred to the committee on Public Lands.

The petition of John and Jacob Lustley ; referred to the committee on Public Lands.

Mr. Russell, chairman of the committee on Engrossed Bills, reported correctly engrossed—

A bill to amend the 4th section of an act to provide for the investment of the Special School Fund ; and

A joint resolution as to mail routes.

Mr. Taylor of Houston, chairman of the committee on Enrolled Bills, reported—

An act to create the county of Throckmorton ; and

An act to incorporate the Preacher's aid Society of the East Texas Conference, correctly enrolled, properly signed, and on yesterday presented to the Governor for his approval.

Mr. Guinn, chairman of the committee on Claims and Accounts, made the following report :

Your committee, to whom was referred a bill for the relief of A. Martin, administrator of Lemuel Taylor, deceased, have considered the same, and have instructed me to report it back and recommend that it be rejected.

The applicant wants the Legislature to grant him relief for not complying with certain provisions in the Probate Law of this State. It appears from the facts submitted to the committee, that the Probate Court of Travis county passed an order requiring the administrator of said estate of Lemuel Taylor, deceased, to pay into the State Treasury the sum of \$1290. Sometime in 1856, probably at the June or July term, complainant did not pay the money into the Treasury until he was notified by the District Attorney of this District—he having detained the money after the time for paying it over. He was liable for five per cent. per month to the State. He alleges that he was ignorant of the provisions of the law in such cases.

The committee believe that it is a well settled principle of law, that every man is presumed to understand the law, and

the committee think it would be a violent presumption to suppose an administrator at the city of Austin would be ignorant of the laws that govern administrators.

Mr. Potter, chairman of the committee on the Judiciary, to which was referred a bill to be entitled an act granting certain privileges to John M. De Bolle, assignee of Luciano Navarro, reported the same back to the Senate and recommended its rejection.

Mr. Pirkey, one of the committee on Private Land Claims, to which was referred a House bill for the relief of C. K. Ham, reported as follows :

It appears that said Ham emigrated to Texas as a single man in 1830 ; that he received a colony certificate in the colony of Stephen F. Austin, as a single man ; that he married in 1837, in Louisiana, and brought his wife to Texas ; that he has not received an augmentation. Your committee believe that he is entitled to the augmentation, and have therefore instructed me to return the bill and recommend its passage.

Mr. Martin, chairman of the committee on Private Land Claims, reported as follows :

The committee on Private Land Claims, to whom was referred the House bill for the relief of John J. E. Gregory, have had the same under consideration, and have instructed me to report the bill back again, without amendment, and recommend its passage.

The committee find the facts in the case to be these : Sometime in November, 1851, said Gregory settled upon the public domain ; that on the 16th day of November, 1853, he caused his survey to be made, and his field-notes were duly recorded ; and after having lived upon and cultivated the premises for three consecutive years, he made the proof required by law before the clerk of the County Court, and forwarded the clerk's certificate, with his field-notes to the Commissioner of the General Land Office for patent, who refused to issue patent because the survey had not been made within eight months from date of settlement, deciding that the pre-emption right was forfeited.

Gregory continued to reside upon and cultivate the same till sometime in November, 1855, making four years occupancy, when he sold for a valuable consideration, giving possession to his assignee and binding himself to perfect titles, believing himself justly entitled to a patent from the State.

The commissioner of the General Land Office is now issuing patents where the clerk's certificate issues two years and four months after surveying, regardless of the date of settlement. Gregory, however, is debarred of availing himself of this decision, because he had moved off the land before having a knowledge of this decision, and his assignee is only cultivating, and not residing upon the premises, and the law requires that the applicant shall be residing upon the premises at the time of making the proof before the clerk of the County Court, that he or she has complied with the provisions of the law, under which he or she claims pre-emption privilege.

The clerk's certificate is lost or mislaid, though Gregory has made affidavit before said clerk bearing date, substantiated by two credible witnesses, proving the date of settlement, period of residence, &c., which shows that Gregory performed on his part all that the law contemplated except having his survey made within eight months from the date of settlement, and Gregory alleges that of that requisition of the law he was ignorant.

Mr. Quinan, chairman of the committee on Education, made the following report :

The committee on Education, to whom was referred the memorial of the Trustees of Bonham Female College, praying a grant of land, have had the same under consideration, and instruct me to report :

That while they believe that the Trustees of the Bonham Female Academy are entitled to all praise for the laudable zeal they have displayed in the cause of education, and in the establishment of an institution which reflects so much credit upon the county in which it is situated, they are of opinion it is inexpedient at this time to grant the relief prayed for.

We could not grant lands to this institution without furnishing an equitable claim upon our bounty to the hundred other institutions of kindred character in the State, and we believe it the better plan to devote our resources first to the support, maintenance and liberal encouragement of common schools, which will more generally extend the benefits of education to the poor, and to the endowment of a State University, which will be the pride of the State.

For these reasons your committee are of opinion that the prayer of the memorialists ought not at this time to be granted.

Mr. Potter, chairman of the committee on the Judiciary, to which was referred a bill to be entitled an act to authorize the Commissioner of the General Land Office to correct errors and mistakes in the issuance of patents under certain acts therein named, reported the same back to the Senate, with an amendment, and recommended the adoption of the amendment and the passage of the bill.

#### AMENDMENT.

In first section, nineteenth line, after the word "that," insert as follows :

"Where patents have issued they shall be surrendered to the Commissioner and cancelled before any correction shall be made; and no patent shall be issued in any case for any larger quantity of land than was confirmed or relinquished to the party, by said act of January 10th, 1852, and any patent issued under the provisions of this act shall contain a statement of the errors or mistakes corrected by the patent."

Mr. Stockdale, from the Judiciary committee made the following report :

The committee on the Judiciary, to which was referred the House bill to be entitled an act for the relief of Jose Maria Gonzales, have had the same under consideration, and a majority of said committee have instructed me to report the same back to the Senate, with the accompanying amendments, and recommend the adoption of the amendments and the passage of the bill.

The majority of the committee are of the opinion that whilst the facts of the case justify the grant of one league to Gonzales, it is unwise and unsafe to grant it as a headright, a portion of them believing that he is, and a portion of them that he is not, under the law, entitled to land as a headright.

A majority instruct me to say, that a headright under the facts of the case, should not, under the law, be granted, and desire to place the action of the committee upon the ground of a grant for services performed by Gonzales.

Respectfully submitted.

The undersigned desires on his own part to say that it is his opinion, that under the Constitution and the laws of the Republic of Texas, according to the facts established in the evidence before the committee, in this case, Jose Maria Gonzales was entitled to a headright.

Section 10th of the General Provisions of the Constitution of the Republic of Texas provides that—

“All citizens, now living in Texas, who have not received their portion of land, in like manner as colonists, shall be entitled to land in the following proportion and manner: Every head of a family shall be entitled to one league and labor of land, &c.”

The boundaries of Texas were established by the act of December 19th, 1836, (Hartley's Digest, Article 1631,) and included the residence of Gonzales. The evidence before the committee shows, also, that Gonzales adhered to the cause of Texas, and that he did not only not avoid a participation in her struggle with Mexico, but on the contrary that he served the country in 1839 and 1840, and was prosecuted by the Mexicans for his friendship to the American cause.

These things being true, it appears to the undersigned as not at all doubtful that Gonzales is legally entitled to a headright. Whether it be granted as a headright or not may be a matter which is not material, but if the evidence be true he is in the opinion of the undersigned so entitled.

What evidence shall now be sufficient to establish the facts upon which such grants shall be made, at this time, is a matter for the consideration of the Legislature.

*Amendments.*—Strike out the word “headright,” in the fifth line, and the words “one labor” in the sixth line.

Mr. Britton made the following report:

The committee on the Militia direct me to recommend the passage of a bill authorizing the Governor to draw and distribute the arms and accoutrements from the United States Government, to which the State of Texas is entitled, with the following amendment:

Strike out section 2 and insert as follows:

“That the Governor be authorized to store arms and accoutrements at any point he may deem proper for the convenience of districts and to save the expense of transportation.”

On motion of Mr. Britton, the rule was suspended, bill and report taken up, read, and the amendment offered by the committee was adopted.

The bill was then passed to a third reading; rule further suspended, bill read third time and passed.

Mr. Potter, chairman of the Judiciary committee, to which was referred a bill authorizing the sale of the interest of R. C. and Mary Marston, in certain lots in the city of Austin, re-

ported the same back to the Senate and recommended its passage with the following amendment :

Substitute for section 2 :

“That before any sale of said property shall be made under the provisions of this act, the Chief Justice of Travis county shall appoint three appraisers, who shall make out and return to the County Court of said county an appraisement of said property, under oath, which shall be filed in said Court; and thereupon, said Thomas William Ward and Susan L. Ward, shall enter into a bond, payable to the Chief Justice of said county, with security to be approved by him, in double the appraised value of said property, and conditioned that they will account to said minors for the proceeds of the sale of said property; and thereupon, said Thomas W. and Susan L. Ward shall be liable to account to said minors for the proceeds of the sale of said property, in the same manner as if the like amount of personal property had come into their possession as guardians of said minors; and this act shall take effect and be in force from and after its passage.”

On motion of Mr. Caldwell, the rule was suspended, bill and report taken up, read, amendment adopted, and bill ordered to be engrossed.

Rule further suspended, bill read a third time and passed.

A message was received from the House, informing the Senate that the House had passed—

A bill to incorporate the town of Marlin, originating in the House; and

A Senate's bill to authorize the County Court of Wharton county to levy a special tax;

Also, that the House refused to recede from its amendments to a Senate's bill supplemental to and amendatory of an act to ascertain legal claims for land or money against the State, in which the Senate refused to concur, and had appointed Messrs. Hart, Wood and Ward, a committee of Conference, and requested the appointment of a like committee on the part of the Senate.

On motion of Mr. Wigfall, the rule was suspended, and a committee of Conference was ordered, to consist of two on the part of the Senate.

The Chair appointed Messrs. Wigfall and Burroughs said committee.

Mr. Taylor of Houston, from the committee on the Judiciary, to which was referred a bill to incorporate the Grand

and subordinate Lodges of Free and Accepted Masons, in the State of Texas, reported the same back to the Senate, and recommended its passage with the following amendment :

Amend by striking out all contained in the bill relating to Grand and subordinate Chapters.

On motion of Mr. Taylor of Houston, the rule was suspended, bill and report taken up, read, amendment adopted, and bill ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Grimes, Guinn, Herbert, Lott, McCulloch, Martin, Maverick, Pirkey, Potter, Quinan, Russell, Scarborough, Shepard, Stockdale, Taylor of Cass, Taylor of Houston, Throckmorton, Walker, Whaley and Wigfall—25.

NAYS—Mr. Wren—1.

By leave, Mr. Taylor of Houston introduced a bill to incorporate the Grand and subordinate Chapters of Royal Arch Masons in this State ; read first time.

On motion of Mr. Taylor of Houston, the rule was suspended, bill read a second time and ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Grimes, Guinn, McCulloch, Martin, Maverick, Pirkey, Potter, Quinan, Russell, Scarborough, Shepard, Stockdale, Taylor of Fannin, Taylor of Houston, Throckmorton, Walker and Whaley—22.

NAYS—None.

Mr. Guinn, chairman of the committee on Claims and Accounts to which was referred a bill for the relief of Goodwin Killian, reported the same back, and recommended that it be referred to the committee on Private Land Claims, as it more properly belonged to said committee.

On motion of Mr. Guinn, the rule was suspended, report taken up and adopted.

Mr. Martin made the following report :

The committee on Private Land Claims have considered a House bill for the relief of the widow and heirs of James W. Majors, and as this is one of that class of claims not provided for by the Court of Claims, and being a proper subject of legislation, to-wit : a pre-emption claim for 320 acres of land in Anderson county, is free from conflict and correct for pat-



enting, except that the land was not vacant at the time when the survey was made, in consequence of the non-return of the unconditional certificate. I am therefore instructed to recommend the passage of the bill.

On motion of Mr. Taylor of Houston, the rule was suspended, report and bill taken up, read, and the bill ordered to be engrossed.

Rule further suspended, bill read a third time and passed.

Mr. Quinan, chairman of the committee on Education, to which was referred a bill to incorporate the Waco Female College, reported the same back and recommended its passage with the following amendments :

Amend 1st, by striking out "College" wherever it occurs, and inserting in lieu thereof "Academy."

Amend 2d, by inserting after "this act," in the last section, the words, "shall continue in force for the term of twenty years, and shall."

On motion of Mr. Erath, the rule was suspended, bill and report taken up, read, and the amendments offered by the committee were adopted.

The bill was then ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS—Messrs. Burroughs, Caldwell, Erath, Fall, Graham, Grimes, Guinn, McCulloch, Martin, Maverick, Pirkey, Potter, Quinan, Russell, Scarborough, Shepard, Stockdale, Taylor of Cass, Taylor of Fannin, Taylor of Houston, Throckmorton, Walker and Whaley—23.

NAYS—None.

Mr. Quinan, chairman of the committee on Education, to which was referred a bill to incorporate the German Free School Association of the city of Austin, reported the same back and recommended its passage with the following amendments :

Insert in section 1, after the words, "real, personal and mixed," "of the value of twenty thousand dollars and no more."

Amend section 2, by striking out the words "so long," and inserting, "for such time not exceeding twenty years from the passage of this act."

On motion of Mr. Caldwell, the rule was suspended, bill and report taken up, read and amendments adopted, and bill passed to third reading.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS.—Messrs. Burroughs, Caldwell, Erath, Fall, Grimes, Guinn, Herbert, McCulloch, Maverick, Pirkey, Potter, Quinan, Russell, Scarborough, Shepard, Stockdale, Taylor, of Houston, Throckmorton, Truitt, Walker and Whaley—21.

NAYS.—Mr. Taylor, of Fannin—1.

Mr. Quinan, chairman of the committee on Education, to which was referred a bill to amend an act to incorporate the Bastrop Academy, reported the same back and recommended its passage.

On motion of Mr. Caldwell, the rule was suspended, bill taken up, read and ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS.—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Graham, Grimes, Guinn, Herbert, McCulloch, Maverick, Pirkey, Potter, Quinan, Russell, Scarborough, Shepard, Stockdale, Taylor, of Cass, Taylor, of Houston, Throckmorton, Walker and Whaley—23.

NAY.—Mr. Taylor, of Fannin—1.

Mr. Quinan, chairman of the same committee, recommended the passage of a bill to incorporate the Meridian Male and Female Academy.

On motion of Mr. Erath, the rule was suspended, bill read and ordered to be engrossed.

Rule further suspended, bill read a third time and passed by the following vote :

YEAS.—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Grimes, Guinn, Herbert, McCulloch, Martin, Maverick, Pirkey, Potter, Quinan, Russell, Shepard, Stockdale, Taylor of Cass, Throckmorton, Truitt, Walker, Whaley and Wigfall—22.

NAYS.—None.

Mr. Russell, chairman of the committee on Engrossed Bills, reported a bill for the relief of the widow and heirs of James W. Majors, deceased, correctly engrossed.

The President submitted the report of the Trustees of the Texas Military Institute, which was, on motion of Mr. Potter, referred to the committee on Education.

Mr. Taylor of Fannin introduced a bill to reorganize the 16th Judicial District ; read first and second times and referred to the committee on the Judiciary.

Mr. Maverick introduced a bill to provide for the election of Superintendant of the Penitentiary and the State Lunatic Asylum; read first and second times and referred to the committee on the Judiciary.

Mr. Britton introduced a bill to relinquish the right of the State to certain lands therein named; read first and second times and referred to the committee on Private Land Claims.

A message was received from the House, informing the Senate that the House had passed a Senate's bill to define the time of holding courts in the second Judicial District, with an amendment.

### ORDERS OF THE DAY.

The resolution offered by Mr. Russell to adjourn, *sine die*, on the first Monday in February, being first in order, was read.

Mr. McCulloch moved to amend by striking out the "first Monday," and inserting the "second Monday."

On motion of Mr. Throckmorton, a call of the Senate was ordered.

Absent—Messrs. Martin, Paschal, Taylor of Fannin, and Wigfall.

The House bill to create the counties of Archer, Mason, Menard, Zapata, Hardin, Hamilton, Kimble and Buchanan, was read and passed to a third reading.

On motion of Mr. McCulloch, the rule was suspended, bill read a third time and passed.

A bill for the relief of Robert Baldwin; read third time and passed by the following vote:

YEAS—Messrs. Britton, Burroughs, Caldwell, Erath, Fall, Graham, Guinn, Herbert, McCulloch, Martin, Maverick, Pedigo, Potter, Quinan, Scarborough, Shepard, Stockdale, Taylor, of Cass, Taylor of Fannin, Taylor of Houston, Throckmorton, Truitt, Whaley, Wigfall and Wren—25.

NAYS—Messrs. Grimes, Lott, Pirkey, Russell and Walker—5

On motion of Mr Guinn, the call of the Senate was suspended.

On motion of Mr. Throckmorton, the adjournment resolution was postponed until Monday next, the 18th inst.

A bill in relation to water courses and privileges; read a third time and passed.

The report of the Judiciary committee, recommending that

the petition of the citizens of Knoxville, in Cherokee county, asking the passage of a prohibitory liquor law, should be laid on the table, was read and adopted.

A bill to prohibit the emancipation of slaves by will, was read and ordered to be engrossed.

On motion of Mr. Wigfall, the rule was suspended, bill read a third time and passed.

The report of the Judiciary committee, offering a substitute for a House bill to provide for an enumeration of the inhabitants of the State of Texas, for the year 1858, was read, substitute adopted, and bill ordered to be engrossed.

On motion of Mr. Taylor of Cass, the rule was suspended, bill read a third time and passed.

A bill to define the time which the General Land Office shall be kept open for the transaction of business each day was read and ordered to be engrossed.

On motion of Mr. Russell, the rule was suspended, and bill read a third time.

Upon its final passage, the yeas and nays being called, stood thus:

YEAS—Messrs. Burroughs, Lott, McCulloch, Maverick, Pirkey, Potter, Russell, Scarborough, Taylor, of Houston, Walker, Whaley and Wren—12.

NAYS—Messrs. Caldwell, Grimes, Guinn, Herbert, Hyde, Martin, Quinan, Stockdale, Taylor, of Cass, Taylor, of Fannin, Throckmorton, Truitt and Wigfall—13.

So the bill was rejected.

Mr. Guinn moved a reconsideration of the vote just taken; carried.

The yeas and nays being again demanded upon its passage, stood thus:

YEAS.—Messrs. Lott, McCulloch, Pirkey, Potter, Russell, Scarborough, Taylor of Houston, Walker, Whaley and Wren—12.

NAYS.—Messrs. Britton, Caldwell, Erath, Fall, Graham, Grimes, Guinn, Herbert, Hyde, Martin, Maverick, Quinan, Stockdale, Taylor of Cass, Taylor of Fannin, Throckmorton, Truitt and Wigfall—18.

So the bill was again rejected.

On motion of Mr. Martin, the Senate adjourned until to-morrow morning, 10 o'clock.